

Advisory Action

Application No.
09/558,329

Applicant(s)
Stern et al.

Examiner
Cheryl Juska

Art Unit
1771



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jul 19, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

4. ☐ Applicant's reply has overcome the following rejection(s): _____
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached Office Action.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1-87
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☐ Other: _____

CHERYL JUSKA
PRIMARY EXAMINER
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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed regarding the finality of the last Office Action have been fully considered but they are not persuasive. Specifically, Applicant cites the Interview Summary of December 21, 2000, as support for the non-finality of said Office Action. In response, it is first asserted that Applicant has misinterpreted the Examiner's Interview Summary. Contrary to Applicant's assertion that, during said Interview, the Examiner deemed a feature patentable over the art of record (see Response to non-final Office Action, Paper No. 9, page 9, first paragraph), the Interview Summary indicates that the prior art would be reviewed with said feature in mind and that, *if and when*, said feature is deemed to be patentable distinct from the prior art, the Examiner would propose an amendment thereto.
2. Secondly, it is asserted that there appears to be a misunderstanding of what exactly said "feature" encompasses. It was the Examiner's understanding that said feature is the presence of *both* top and bottom yarn faces. Presently, not all of the independent claims contain such a limitation. Note the 102 rejection of claims 65 and 67-90 by the Sternlieb patent (Final Office Action, sections 16 and 30). It appears that Applicant's interpretation of said feature is the "effectively continuous" nature of said top and bottom faces, as described in the specification, col. 2, lines 59-62.

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3. Applicant asserts that since an amendment to include said feature was proposed, but not entered, during the Interview, that the last Office Action should not have been made final. By the Examiner's interpretation of said feature, an amendment thereto would merely withdraw said 102 rejection of claims 65 and 67-90 by Sternlieb. The other prior art rejections would have been maintained. On the other hand, an amendment comprising the Applicant's interpretation of said feature (i.e., the top and bottom faces are effectively continuous yarn faces), would have altered the Final Office Action in the following manner:

a. A new 112, 2nd rejection would have been made regarding the relativity of the term "effectively continuous." The specification defines said term as "the web not being exposed, although small gaps or interstices between yarns may allow viewing of said web *upon close inspection*." How close is "close?" What are the boundaries of "effectively continuous?"

b. The 102 rejections of the claims by the cited Lefkowitz, Ott, and Gillies patents, as set forth in sections 17-19, would have been changed from a 102 to a 102/103 rejection. Although none of the cited prior art explicitly teaches a "continuous" yarn face, said limitation is relative. Thus, in the broadest sense of the term "effectively continuous," the cited art could be interpreted as anticipating the present claims. Alternatively, it would have been obvious to one of ordinary skill in the art to modify the stitch density in order to enhance certain properties (e.g., strength, durability, abrasion resistance, comfort, etc.) of the stitch bonded nonwoven.

4. Therefore, even if an amendment to the continuous nature of the yarn faces had been entered prior to the last Office Action (i.e., Final Rejection), said Office Action would have still

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been made final as necessitated by amendment. In other words, said amendment would not have placed the case in condition for allowance, which is why the Examiner did not call the Applicant to propose such an amendment prior to issuing the Final Rejection. Even if, for arguments sake, said feature was deemed patentable distinct over the cited prior art and such an amendment was entered, the case would still have been finally rejected due to the standing 112, 1st rejection.

5. In conclusion, Applicant's arguments have been found unpersuasive and the finality of the last Office Action is maintained. The Examiner would likely allow entry of an Amendment After Final, which limits "the top and bottom faces yarns to being effectively continuous," in that said limitation has been previously considered. However, as noted above, such an amendment would not place the application in condition for allowance. Without a quantifiable definition of the continuous face (e.g., stitch density), the prior art rejections will be maintained. Even if said quantifiable definition can be included in the claims, an obviousness rejection might be maintained.


6. With respect to Applicant's assertion that the objection to the declaration, as set forth in section 2 of the Final Rejection, constitutes a non-final Office Action, it is asserted that said objection is NOT a rejection. In other words, the deficient declaration will not prevent an indication of allowability. Therefore, the finality of the last Office Action is proper.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to

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reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.



CHERYL JUSKA
PATENT EXAMINER

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August 4, 2001